

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROBERT L. WISE,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 4:10-cv-04488
	§	Jury Demanded
UNITED STATES DEPARTMENT OF	§	
VETERANS AFFAIRS, BANK OF	§	
AMERICA, N.A., WELLS FARGO	§	
BANK, N.A., RE/MAX NORTHWEST	§	
REALTORS, AND DELILAH	§	
BIRMINGHAM	§	
Defendants.	§	

PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED PETITION

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COMES Plaintiff, Robert L. Wise, Movant herein, and files this Motion For Leave to File Amended Petition and states as follows:

I.

Plaintiff hereby requests leave of this Court to file an amended Complaint, subject to his Motion to Remand, pursuant to FED. R. CIV. P. 15(a)(2).

Plaintiff's First Amended Petition was specially excepted to by Defendants RE/MAX Northwest Realtors, Delilah Birmangham, and Wells Fargo Bank, N.A. in that it was not clearly spelled out against which parties each of the causes of action were being pursued. The Second Amended Complaint is an attempt to address those special exceptions. Further, it is an attempt to address inartful pleading on the part of Plaintiff's counsel. Plaintiff's counsel had been aware of several deficiencies in the First Amended Petition for some time and had been crafting the

amendments since shortly after the First Amended Petition was filed. Only the Removal to this Court is prohibiting Plaintiff from being allowed to amend freely under the liberal pleading amendment rules as practiced in Texas state courts.

FED. R. CIV. P. 15(a)(2) provides that leave to file an amended petition should freely be given "when justice so requires." This case, at its core, involves a lender's defective foreclosure and title to Plaintiff's homestead real property in Harris County, Texas. The amendments to the pleading are intended to respond to the special exceptions and to clarify the causes of action. Justice will be served by allowing filing of Plaintiff's Second Amended Complaint, subject to Plaintiff's Motion to Remand.

WHEREFORE PREMISES CONSIDERED, Plaintiff, Robert L. Wise, prays that the Court will grant Plaintiff's Motion.

Respectfully submitted,

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Robert L. Wise

CERTIFICATE OF CONFERENCE

This is to certify that on December 8 & 9, 2010, the undersigned attorney conferred with Joshua Bennett, Mark Bankston, Marshall G. Rosenberg and Daniel David Hu in good faith to resolve the issues surrounding this matter without court intervention. Joshua Bennett was not opposed to the filing of the amended Complaint, so long as the jurisdiction of this Court was not affected. Mark Bankston was sent a copy of the amended Complaint to review, but was unable to respond to the undersigned attorney in time for filing. Marshall G Rosenberg was unopposed to an earlier draft of the Complaint, but was unable to respond to a later draft in time for filing. A message was left for Daniel David Hu that was not returned. Therefore, the matter is presented to the Court for determination.

/s/ Anne K. Ritchie

Anne K. Ritchie

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2010, a true and correct copy of the foregoing was sent by electronic document transfer through the Court's electronic filing system to the attorneys of record as indicated below.

/s/ Anne K. Ritchie

Anne K. Ritchie

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